



STATE OF INDIANA  
ALCOHOL AND TOBACCO COMMISSION

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Bertie's Music Bar  
d/b/a Bertie's Music Bar  
1129 E. Main St.  
Richmond, IN 47374

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Permit #RR89-10453

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

I.

BACKGROUND OF THE CASE

Bertie's Music Bar d/b/a Bertie's Music Bar, 1129 E. Main St., Richmond, Indiana 47374 ("Permittee") is the holder of an Alcohol and Tobacco Commission permit type 210, permit #RR89-10453. The Permittee is charged with the following violations occurring on December 30, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b)

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on July 8, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared by Ronald J. Moore, attorney at law and co-owner. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape-recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.

EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police Citation Report, regarding an incident occurring on December 30, 2009, at Bertie's Music Bar, Richmond, IN.
3. Copy of Indiana Excise Police Report of Permit Visit and Evaluation issued to Bertie's Music Bar d/b/a Bertie's Music Bar, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b), regarding an incident occurring on December 30, 2009, at the permit location.
4. One copy of a photograph of a youth known as Minor Zachary IU#30064, DOB 4/1/91.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Randy Weitzel

2. Cpl. Jeff Lang
3. A youth known as Minor Zachary IU #30064, DOB 4/1/91

The following individuals testified on behalf of the Permittee in this cause:

1. Terry Hillard, co-owner

### III. FINDINGS OF FACT

1. The Permittee, Bertie's Music Bar, d/b/a Bertie's Music Bar, 1129 E. Main St., Richmond, Indiana 47265, is the holder of a type 210 permit, permit #DL89-10453. (ATC file)
2. Terry Hillard, Cathy Hillard and Ronald Moore are the owners of Bertie's Music Bar. (Permit Violation Hearing, ATC file)
3. The Permittee, by and through Terry Hillard, admitted to Cpl Lang that he, Terry Hillard, sold alcoholic beverages to a minor, without asking for his age, date of birth or checking his identification to determine his age, and that said sale occurred on December 30, 2009. The testimony is disputed as to whether he sold to Minor Zachary or a different minor. (Permit Violation Hearing).
4. On Wednesday, December 30, 2009, at approximately 9:37 p.m., Indiana Excise Police Officer Randy Weitzel and Cpl. Jeff Lang were conducting random, unannounced inspections at locations where alcoholic beverages are sold or distributed, pursuant to IC 7.1-5-7-16 and IC 7.1-5-7-17. These inspections are commonly known as Survey of Alcohol Compliance ("SAC") checks. (Permit Violation Hearing; ATC file).
5. Officer Weitzel and a minor, known as Zachary IU # 30064, DOB 4/1/1991 ("Zachary"), conducted a SAC check at Bertie's Music Bar in Richmond, Indiana. (Permit Violation Hearing; ATC file).
6. On December 30, 2009, at approximately 9:37 p.m., Zachary and Officer Weitzel (in plain clothes) entered Bertie's Music Bar in unidentified capacities. (ATC file; Permit Violation Hearing)
7. Upon entering Bertie's Music Bar, Officer Weitzel and Zachary walked up to the bar and sat down. One of the co-owners, Terry Hillard, approached them and asked them what they would like to drink. Zachary ordered a 12 oz. can of Bud Light and Officer Weitzel ordered a soft drink. Zachary paid \$2.25 for the beer and Officer Weitzel paid for the soft drink. (ATC file; Permit Violation Hearing)
8. Officer Weitzel and Zachary left the permit premises shortly thereafter. While inside the permit premises, Zachary was never asked his age, date of birth, or for identification. (Permit Violation Hearing; ATC file)
9. Officer Weitzel and Cpl Lang reentered the permit location at approximately 10:40 p.m., and identified themselves to co-owner Terry Hillard as Indiana State Excise Police Officers. Cpl. Lang spoke to co-owner Hillard while Officer Weitzel prepared a Notice of Violation for furnishing alcohol to a minor and allowing a minor to loiter. Cpl Lang showed Hillard a photograph of Zachary and told him Zachary's age. Cpl. Lang explained the violations to Hillard. Co- owner Hillard signed and received a copy of the Notice of Violation charges of: 1) Furnishing alcoholic beverage to a minor, Indiana Code 7.1-5-7-8, and 2) Allowing a minor to loiter, Indiana Code 7.1-5-7-10(b). (Permit Violation Hearing; ATC file)
10. Zachary testified that he had never been in the permit premises prior to this visit and had never been outside the permit premises and had never before tried to enter the permit premises. (Permit Violation Hearing)
11. Terry Hillard testified that the permit location was co-owned owned by himself, his wife Cathy and Ronald Moore. He testified that the bar began operation by the new co- owners on November 1, 2009, and that these new co-owners had cleansed the bar of its former practices of prostitution, drug dealing on and about

the permit premises as well as serving minors. The permit premises further enjoyed a positive and close working relationship with the local police department. (Permit Violation Hearing)

12. Terry Hillard testified further that four cameras were installed in the front of the permit premises and two cameras in the back. Hillard reviewed the DVD recording of December 30, 2009, and also had specific memory of that evening's events. The DVD recording has been recorded over and was not admitted into evidence. (Permit Violation Hearing)
13. Terry Hillard testified that (contrary to Cpl. Lang's testimony) he did not recall serving Zachary that evening and that when he was shown a youth's photograph by Cpl. Lang that it was not a photograph of Zachary and when he told Cpl. Lang those facts that Cpl. Lang said "Ok. We have made a mistake." (Permit Violation Hearing)
14. Terry Hillard testified that when the youth and Officer Weitzel came in, a group of people all came in at the same time and that the youth and Officer Weitzel sat down where there was already an empty coke and Bud Light in front of them and that he didn't realize he was serving new customers. Terry Hillard doesn't recall Zachary and doesn't recall seeing him in there on that evening. One of the two people who had been formerly sitting at the bar, in the seats later occupied by the youth and Officer Weitzel, looked similar to the customers who had just left. Officer Weitzel looked similar to one of the departing customers, but Zachary did not. (Permit Violation Hearing)
15. The facts regarding the serving of a minor known as Zachary, as testified to by Officer Weitzel, Cpl. Lang and Zachary are not true according to Terry Hillard. (Permit Violation Hearing)
16. Cpl. Lang was recalled as a witness and reconfirmed that Zachary was the only minor with whom Officer Weitzel and Cpl. Lang were working that evening and that Zachary was, in fact, the youth who was served at the permit location and that it was Zachary's photograph that was shown to Terry Hillard. (Permit Violation Hearing)
17. The Permittee believes that it was in an impossible position to comply with not serving this minor, due to the fact that it was very busy, only had one bartender on duty, and made a mistake in thinking it was serving customers who were already at the permit location and were not new customers. (Permit Violation Hearing)

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. The definition of a permittee includes an agent, a servant, or other person acting on behalf of a permittee, whenever a permittee is prohibited from doing an act under this title. Indiana Code 7.1-1-3-30(b).
3. Terry Hillard (co-owner) was an agent or other person acting on behalf of a permittee, namely, Bertie's Music Bar, d/b/a Bertie's Music Bar. Indiana Code 7.1-1-3-30(b)
4. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
5. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
6. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Indiana Code 7.1-5-7-10(a)

7. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7
8. It is unlawful for a person to recklessly, knowingly, or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8
9. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1
10. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind.App.1892)
11. The permittee, Bertie's Music Bar, d/b/a Bertie's Music Bar, by virtue of its relationship with Terry Hillard (co-owner), is guilty of the violations of recklessly furnishing alcoholic beverage(s) to a minor and allowing a minor to loiter. Indiana Code 7.1-5-7-8 and Indiana Code 7.1-5-7-10(b)
12. The weight of the evidence, burden of proof, and determinations of the credibility of witnesses do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1.
13. The permittee, Bertie's Music Bar, d/b/a Bertie's Music Bar, is guilty of recklessly furnishing alcoholic beverage(s) to a minor pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Bertie's Music Bar, d/b/a Idle Bertie's Music Bar, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and  
Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: \_\_\_\_\_

\_\_\_\_\_  
E. Edward Dunsmore Hearing Judge  
Alcohol and Tobacco Commission